

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:09cv03

SUNTRUST MORTGAGE, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 DONALD D. BUSBY,)
 ROBERT G. RONK, and)
 KENNARD M. DAVIS,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on the Response to Suntrust's Request for Entry of Judgment [Doc. 206] filed by Defendants Donald D. Busby, Jr., Robert G. Ronk and Kennard M. Davis.

On October 6, 2010, this Court entered a Memorandum of Decision and Order granting judgment as a matter of law to SunTrust Mortgage, Inc. on the amount of the debts owed by the Defendants on their respective promissory notes. [Doc. 151]. On the eve of the trial of the remaining claims of fraud asserted by SunTrust against the Defendants, the parties represented to the Court that this matter was settled, including the claims as between these

parties. On January 28, 2011, the parties filed a Rule 41 Stipulation of Dismissal in which they stipulated as follows:

The Parties consent to immediate entry of judgment against the Defendants in favor of SunTrust as to Count I (Breach of Contract)[.]”

Count II (Fraud) of this Action is hereby voluntarily dismissed without prejudice, pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), by stipulation as to and between the Parties hereto.

[Doc. 195, at 2].

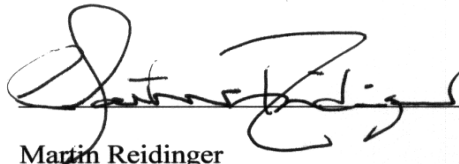
In this Stipulation of Dismissal, Defendants Busby, Ronk and Kennard Davis clearly agreed to “immediate entry of judgment” in connection with the breach of contract claims. In the current pleading [Doc. 206], they now request that the Court refrain from entering Judgment as to those claims. They have styled the pleading as a “Response to SunTrust’s Request for Entry of Judgment.” In the body of their “Response” they make reference to a filing made by the Plaintiff on March 8, 2011, wherein it requested entry of judgment against Busby, Ronk and Kennard Davis. No such document, however, has been filed by SunTrust. Nor is such a pleading necessary since judgment as a matter of law has been awarded to SunTrust [Doc. 151] and the Defendants have stipulated and agreed to the “immediate” entry of said judgment. [Doc. 195].

In their “Response” Defendants Ronk, Busby and Kennard Davis assert

that the Plaintiff has failed to engage in mediation in good faith to resolve the fraud claims. Those claims, however, were represented to this Court as having been settled so that the parties would not have to proceed to trial when it was scheduled. These Defendants have presented no basis to this Court whereby Judgment should not be entered in accord with the Court's previous Order. [Doc. 151].

IT IS, THEREFORE, ORDERED that Judgment shall be entered finally disposing of this matter simultaneously herewith.

Signed: April 4, 2011


Martin Reidinger
United States District Judge

